

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

STUART MACGREGOR HOFFMAN,

Defendant.

CASE No. 2:22-cr-00018-TL

AMENDED ORDER OF
RESTITUTION

Before the Court is the issue of restitution that Defendant Stuart MacGregor Hoffman, who pled guilty to the Production of Child Pornography and Possession of Child Pornography, must pay to his identifiable victims who have requested it, pursuant to 18 U.S.C. § 2259. On June 15, 2022, the Court conducted a sentencing hearing for Mr. Hoffman but reserved ruling on the issue of restitution pending further briefing on the issue.

The Court has reviewed the Government's Post Judgment Statement Regarding Restitution ("Government's Statement") (Dkt. No. 35), the 2,485-page Exhibit A accompanying the Government's Statement (Dkt. No. 37), the Government's Supplemental Post Judgment

Statement Regarding Restitution (“Government’s Supplemental Statement”) (Dkt. No. 42), the 297-page Exhibit A accompanying the Government’s Supplemental Statement (Dkt. No. 44), the 126-page Exhibit B to the Government’s Supplemental Sentencing Memorandum Regarding Restitution (Dkt. No. 49), Mr. Hoffman’s Response to the Government’s Request for Restitution (Dkt. No. 38), the Government’s Second Supplemental Post-Judgment Statement Regarding Restitution (Dkt. No. 52),¹ and the remaining relevant record. In their briefing, the Parties agree that the Court can determine restitution on the written pleadings without further oral argument, and the Court agrees. *See* Dkt. No. 35 at 1; Dkt. No. 38 at 1. The Court hereby issues this Order regarding restitution.

I. BACKGROUND

On February 18, 2022, Mr. Hoffman pled guilty to one count of Production of Child Pornography, in violation of 18 U.S.C. § 2251(a) and (e) (“Count One”), and one count of Possession of Child Pornography, in violation of 18 U.S.C. § 2252(a)(4) and § 2252(b)(2) (“Count Two”). Dkt. No. 13. The production charge is unrelated to any of the victims who are seeking restitution. The Court entered a Judgment on June 15, 2022, sentencing Mr. Hoffman to 240 months of imprisonment for Count One and 180 months of imprisonment for Count Two, to run concurrently to each other as well as the previously imposed state court sentence and to be followed by a lifetime term of supervised release. Dkt. No. 33 at 2. The judgment deferred ordering restitution. *Id.* at 8.

¹ This Order has been amended to reflect an error in the number of victims—and therefore the total amount of restitution—who have requested restitution from Mr. Hoffman. See Dkt. No. 52 (Government statement acknowledging inadvertent error). Namely, the prior version of this Order listed the two sisters of “PinkHeartSisters” as separate victims, when it should have accounted for the two sisters as one victim in accordance with the Victim Identification Report provided to Mr. Hoffman. See *id.*

From the collection of child sexual abuse material obtained from Mr. Hoffman, the Child Identification Report prepared by the National Center for Missing and Exploited Children identified 283 victims in his child pornography collections. Dkt. No. 35 at 2. The Government requests restitution for 26 of the identified victims, in amounts ranging from \$3,000 to \$15,000 each, as follows:²

| | Series/Victim | Request |
|-----|----------------------|---|
| 1. | 8 Kids: John Doe 1 | \$3000–\$15,000 |
| 2. | 8 Kids: John Doe 2 | \$3000–\$15,000 |
| 3. | 8 Kids: John Doe 3 | \$3000–\$15,000 |
| 4. | 8 Kids: John Doe 4 | \$3000–\$15,000 |
| 5. | 8 Kids: John Doe 5 | \$3000–\$15,000 |
| 6. | At School | \$10,000 |
| 7. | Best Necklace | \$5,000 |
| 8. | BluePillow1 | \$5,000 |
| 9. | BluesPink1 | Court’s discretion but no less than \$3,000 |
| 10. | CinderblockBlue | Court’s discretion but no less than \$3,000 |
| 11. | Cindy | \$8,000 |
| 12. | Jan_Socks1 | \$10,000 |
| 13. | Jenny | Court’s discretion but no less than \$3,000 |
| 14. | Lighthouse1 | \$10,000 |
| 15. | Marineland1 | \$10,000 |
| 16. | Middle Model Sister | \$3,000 |
| 17. | Misty | Court’s discretion but no less than \$3,000 |
| 18. | Motorcouch1 | \$5,000 |
| 19. | PinkHeartSisters | Court’s discretion but no less than \$3,000 |
| 20. | Rap72 | \$5,000 |
| 21. | RapJerseys | \$5,000 |
| 22. | SpongeB | \$3,000 |
| 23. | Sweet Pink Sugar | \$5,000 |
| 24. | Sweet White Sugar | \$5,000 |

² The Government originally requested restitution for eighteen of these individuals. See Dkt. No. 31 at 6. The Government’s Statement requested restitution for 27 individuals. Dkt. No. 35 at 4. The Government’s Statement added requests for 8 Kids Series, Middle Model Sister, SpongeB, and Tara. *Id.*; Dkt. No. 37 at 2–3. The Government later clarified that “PinkHeartSisters” should be counted as a single victim rather than two victims, as represented in the Government’s Statement. Dkt. No. 52. Therefore, the total number of victims seeking restitution is 26.

| | | |
|-----|-------|----------|
| 25. | Tara | \$3,000 |
| 26. | Vicky | \$10,000 |

2 Dkt. No. 37 at 2–3.

3 Mr. Hoffman stipulates that: (1) the Government has proven each of these individuals is a
4 victim within the meaning of the law; (2) the Government has established each of these
5 individuals was harmed by his misconduct; (3) the Government has established each of these
6 individuals incurred losses as a result of the harm that occurred due to his misconduct; and
7 (4) the Government has established by a preponderance of the evidence the full amount of each
8 victim’s losses caused by him. Dkt. No. 38 at 1–2. Mr. Hoffman requests that the Court order the
9 statutory minimum of \$3,000 per victim. *Id.* at 2.

10 II. LEGAL STANDARD

11 The crimes to which Mr. Hoffman pled guilty fall under Chapter 110 of Title 18 of the
12 U.S. Code, which covers offenses involving the trafficking of child pornography. 18 U.S.C.
13 § 2259. Trafficking in child pornography, for purposes of restitution, includes the receipt or
14 possession of child pornography. 18 U.S.C. § 2259(c)(3). For these offenses, restitution is
15 mandatory, 18 U.S.C. § 2259(a), and a court may not decline to issue an order under this section
16 due to the “economic circumstances of the defendant.” 18 U.S.C. § 2259(b)(4).

17 For a court to award restitution under the statute, the government must first “prove by a
18 preponderance of the evidence that [the defendant’s] offenses proximately caused the losses
19 incurred by” the victims. *United States v. Kennedy*, 643 F.3d 1251, 1263 (9th Cir. 2011). The
20 Government then must prove the restitution amount by a preponderance of the evidence. 18
21 U.S.C. § 3664(e). The Government “must provide the court with enough evidence to allow the
22 court to estimate the ‘full amount of the victim’s losses’ with ‘some reasonable certainty.’”
23 *Kennedy*, 643 F.3d at 1261 (quoting *United States v. Doe*, 488 F.3d 1154, 1159–60 (9th Cir.
24

1 2007)). It may be impossible to trace the precise loss caused by the individual defendant under a
 2 “more traditional causal inquiry.” *See Paroline v. United States*, 572 U.S. 434, 458 (2014).
 3 Nevertheless, it is “improper if the district court must ‘engage in . . . arbitrary calculations’ to
 4 determine the amount of the victim’s losses.” *Id.* (quoting *United States v. Laney*, 189 F.3d 954,
 5 967 n.14 (9th Cir. 1999)).

6 In 2018, Congress amended the mandatory restitution statute. *See Amy, Vicky, and Andy*
 7 Child Pornography Victim Assistance Act of 2018 § 3, 132 Stat. at 4384. The statute, as
 8 amended, provides a three-step process for determining restitution in a case involving a
 9 defendant convicted of trafficking in child pornography, *see* 18 U.S.C. § 2259(c)(3):

10 [Step One] **Determining the full amount of a victim’s losses.**--
 11 The court shall determine the full amount of the victim’s losses
 12 that were incurred or are reasonably projected to be incurred by the
 victim as a result of the trafficking in child pornography depicting
 the victim.

13 [Step Two] **Determining a restitution amount.**--After completing
 14 the determination required [in Step One], the court shall order
 15 restitution in an amount that reflects the defendant’s relative role in
 the causal process that underlies the victim’s losses, but which is
no less than \$3,000.

16 [Step Three] **Termination of payment.**--A victim’s total
 17 aggregate recovery pursuant to this section shall not exceed the full
 18 amount of the victim’s demonstrated losses. After the victim has
 received restitution in the full amount of the victim’s losses as
 measured by the greatest amount of such losses found in any case
 involving that victim that has resulted in a final restitution order
 under this section, the liability of each defendant who is or has
 been ordered to pay restitution for such losses to that victim shall
 be terminated. The court may require the victim to provide
 information concerning the amount of restitution the victim has
 been paid in other cases for the same losses.

22 18 U.S.C. § 2259(b)(2). The Ninth Circuit has provided limited guidance on the process of
 23 determining the restitution portion of a victim’s loss attributable to a defendant under 18 U.S.C.
 24 § 2259 since it was amended. Absent such guidance, the Court continues to rely on *Kennedy*,

1 *Paroline*, and other pre-2018 case law as guideposts (discussed below) to determine the
2 restitution that Defendant is liable for here.

III. DISCUSSION

4 “The unlawful conduct of everyone who reproduces, distributes, or possesses the images
5 of the victim’s abuse . . . plays a part in sustaining and aggravating [the] tragedy.” *Paroline*, 572
6 U.S. at 457. In this case, Mr. Hoffman admits to the possession of child pornography images of
7 each of the victims who are requesting restitution, stipulates that the individuals are victims who
8 were harmed by his conduct and incurred losses as a result, and requests that the Court order the
9 statutory minimum of \$3,000 per victim. Dkt. No. 38 at 1–2.

A. Step One: Determining the Full Amount of Each Victim's Losses

In determining the appropriate restitution for each victim to be paid by a defendant, a district court should first “determine the amount of the victim’s losses caused by the continuing traffic in the victim’s images.” *Paroline*, 572 U.S. at 460; *see also* 18 U.S.C. § 2259(b)(2)(A). A victim’s losses include “any costs incurred, or that are reasonably projected to be incurred in the future, by the victim, as a proximate result of the offenses involving the victim, and in the case of trafficking in child pornography offenses, as a proximate result of all trafficking in child pornography offenses involving the same victim.” 18 U.S.C. § 2259(c)(2). Examples of such losses are: (1) medical services relating to physical, psychiatric, or psychological care; (2) physical and occupational therapy or rehabilitation; (3) necessary transportation, temporary housing, and childcare expenses; (4) lost income; (5) reasonable attorneys’ fees, as well as other costs incurred; and (6) any other relevant losses incurred by the victim. *Id.* Future counseling expenses are recoverable as part of restitution, even if none have yet been incurred. *United States v. Laney*, 189 F.3d 954, 966–67 (9th Cir. 1999).

1 The Government describes its process of determining the appropriate restitution amount
2 to request as follows:

3 Law enforcement first obtains a defendant's collection of child
4 sexual abuse material. This collection is sent, as a routine part of a
5 child-exploitation investigation, to the National Center for Missing
6 and Exploited Children (NCMEC) in Alexandria, Virginia, which
7 prepares a "Child Identification Report." The purpose of the report
8 is to identify known victims and to discover unidentified ones

9 All identified victims for whom the U.S. Attorney's Office (1) has
10 contact information and that have (2) requested notification are
11 alerted to their right to seek restitution. Notice is accomplished by
12 a victim witness specialist in the Office using a second report,
13 called a "Victim Information Report," created by the FBI based on
14 the identified series in the NCMEC Child Identification Report. . . .
15 The Department of Justice keeps copies of victim impact
16 statements on file to relieve victims of the burden of repeated
17 resubmission. As such, some of the letters written by the victims or
18 their parents or guardians are dated.

19 Dkt. No. 35 at 2–3. The Government notes that not all victims choose to participate in the
20 process, as restitution may be perceived as a "monetization of their suffering that ties them,
21 intolerably, to the defendant" while, for others, receiving endless inquiries regarding restitution
22 would defeat their desire to remain unaware of the extent of their victimization. *Id.* at 3. For
23 those individuals who request restitution, the Victim Assistance Unit works with attorneys
24 representing the victims to assess the incurred losses as a result of the harm caused by a specific
defendant. *Id.* at 4.

19 The victim impact statements submitted in this case detail the long-term and ongoing
20 effects of each victim's abuse and the continued viewing of his or her abuse by others. Where
21 psychological evaluations were provided, they confirmed that the knowledge that the victims'
22 images continue to circulate and be viewed on the internet continue to profoundly impact each
23 victim's life. Life care or treatment plans also were provided for some of the victims, though
24 they only account for the costs of physical or mental-health-related treatment a victim will need.

1 Some victims also provided information from economic or vocational experts demonstrating that
 2 the continued sharing and viewing of their abuse either has caused or is likely to cause a loss in
 3 income the individual can earn, with some victims providing a specific estimate of the loss.

4 Even though Mr. Hoffman stipulated that the Government has established by a
 5 preponderance of the evidence the full amount of each victim's losses caused by him (Dkt. No.
 6 38 at 2), the Court has nonetheless carefully reviewed all the materials provided on each victim
 7 seeking restitution from Defendant, including the victim impact statements, life care plans, and
 8 estimates of occupational or economic loss for the victims. Given the sensitive and personal
 9 nature of the information, the Court will not detail the specific circumstances and harm suffered
 10 by each individual. But based on this review, the Court finds that the evidence submitted by the
 11 Government sets forth sufficient information for the Court to determine the total losses suffered
 12 to date by the 26 victims "as a result of the trafficking in child pornography depicting the
 13 victim." 18 U.S.C. § 2259(b)(2). The Court finds that the total loss for each victim is the amount
 14 listed by the Government for each individual in Exhibit A to the Government's Statement.³ Dkt.
 15 No. 36 at 2–3.

16 Thus, having completed Step One of the Section 2259(b)(2) inquiry, *i.e.*, determining the
 17 full amount of each victim's losses, to the Court now proceeds to Step Two of the inquiry—
 18 determining the amount of restitution attributable to Mr. Hoffman.

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 20
 21
 22 ³ In light of the sensitivity of the information contained in the sealed document and the lack of dispute as to the
 23 amounts between the Parties, the Court does not list the specific amounts here. The total loss per victim ranges from
 24 approximately \$43,000 to over \$12 million per victim, with the exception of one victim who has not completed the
 forensic examination necessary to determine total losses but has at least shown that the cost for obtaining those
 reports, which is recoverable as restitution, would be approximately \$20,500. See Dkt. No. 37 at 2–3, 1619–21.

1 **B. Step Two: Determining Defendant's Restitution Amount**

2 Next, the Court must determine an amount of restitution "that reflects the defendant's
 3 relative role in the causal process that underlies the victim's losses." 18 U.S.C. § 2259(b)(2). The
 4 Court considers certain factors in assessing "the relative causal significance of the defendant's
 5 conduct in producing those losses." *Paroline*, 572 U.S. at 460. Those factors include: (1) the
 6 number of past criminal defendants found to have contributed to the victim's general losses;
 7 (2) reasonable predictions of the number of future offenders likely to be caught and convicted for
 8 crimes contributing to the victim's general losses; (3) any available and reasonably reliable
 9 estimate of the broader number of offenders involved; (4) whether the defendant reproduced or
 10 distributed images of the victim; (5) whether the defendant had any connection to the initial
 11 production of the images; (6) how many images of the victim the defendant possessed; and
 12 (7) other facts relevant to the defendant's relative causal role. *Id.* A court must also disaggregate
 13 any losses caused by "the original abuse of the victim" and losses caused by "the ongoing
 14 distribution and possession of images of that original abuse, to the extent possible." *United States*
 15 *v. Galan*, 804 F.3d 1287, 1291 (9th Cir. 2015). The calculation of restitution "cannot be a precise
 16 mathematical inquiry and involves the use of discretion and sound judgment." *Paroline*, 572
 17 U.S. at 459; *see also United States v. Massa*, 647 F. App'x 718, 720 (9th Cir. Apr. 1, 2016) (it
 18 was not error to fail to "distinguish between losses caused by the ongoing traffic in the victims'
 19 images that happened before [the defendant] first accessed the images from the losses that
 20 happened after he first accessed the images").

21 Here, despite the copious information the Government has now provided in support of the
 22 Court's determination of the restitution that Mr. Hoffman must pay, the Court finds that it does
 23 not have the information required to determine "the relative causal significance of the
 24 defendant's conduct in producing [the total] losses" for each individual. *Paroline*, 572 U.S. at

1 460. The Court recognizes the daunting and difficult task the Government faces in furnishing the
2 information that the law requires to prove restitution. The Court is also mindful that requiring
3 updated information from victims may re-traumatize them as it could force them to be constantly
4 reminded of what happened to them, and this Court's intent is not to put up hurdles to the
5 collection of restitution for victims. Nevertheless, the Court must ensure that the law is followed
6 and that the Government has satisfied its burden of proving the amounts requested for each
7 victim.

8 The Court begins its analysis of the appropriate restitution amount starting with the last
9 four *Paroline* factors. In this case, as it relates to the victims who have requested restitution,
10 Mr. Hoffman was only charged with, and pled guilty to, the possession of pornography. There is
11 no evidence before the Court that Mr. Hoffman reproduced or distributed images of any of the
12 victims or had any connection to the initial production of the images. *Paroline*, 572 U.S. at 443.
13 The Court was not provided with information regarding how many images of each victim
14 Mr. Hoffman possessed. *Id.*

15 With regard to the first three *Paroline* factors, a handful of the victims provided
16 information regarding the number of past criminal defendants found to have contributed to the
17 victim's general losses. However, the Court does not find this *Paroline* factor particularly helpful
18 in determining *this* defendant's relative causal role in each victim's losses without the corollary
19 factors regarding the number of future offenders likely to be caught and convicted for crimes
20 contributing to the victim's losses or any reasonably reliable estimate of the broader number of
21 offenders involved. Of course, these latter two factors require the Government to speculate, a
22 practice this Court does not encourage. *See United States v. Reynolds*, 2014 WL 4187936, at *6
23 (E.D. Mich. Aug. 22, 2014) ("The Government has not provided evidence regarding these
24 factors, likely because it simply does not have such information. Frankly, these two suggested

1 factors strike this Court as incredibly speculative—this Court questions how you could ever have
 2 reasonable or reliable estimates of the above.”), *aff’d*, 626 F. App’x 610 (6th Cir. 2015). Indeed,
 3 as the Court of Appeals for the District of Columbia has observed, “many courts have concluded
 4 that, as restitution factors, future convictions and total offenders are ‘virtually unknown and
 5 unknowable.’” *United States v. Monzel*, 930 F.3d 470, 482 (D.C. Cir. 2019) (quoting *United*
 6 *States v. Crisostomi*, 31 F. Supp. 3d 361, 364 (D.R.I. 2014)) (collecting cases). Therefore, the
 7 Court places little weight on these three factors.

8 Counsel for one of the victims points out the problem with the current system for
 9 determining restitution for victims:⁴

10 [A victim] is not aware of the number of individuals who might
 11 have possessed [the victim’s] images who have not been
 12 apprehended. It is not possible for [the victim], nor anyone at this
 13 time, to know the broader number of people downloading [the
 14 victim’s] images. Similarly, no one can possibly know or
 reasonably estimate the number of individuals who may in the
 future possess [the victim’s] images. Further, there is no guarantee
 that such potential offenders would be caught and brought to
 justice. [The victim] is in no position to predict what that number
 might be.

15 Ascertainment of such information would seem to be subject to
 16 decisions made within the Justice Department concerning the focus
 17 of its prosecutorial efforts. While any individual child pornography
 18 defendant may be found with the images of a large number of
 19 identified victims, and those victims may receive notices of their
 20 involvement in a particular criminal case, it remains within the sole
 discretion of the Government whether to include any particular
 image within the charge or charges it brings. Additionally, after
 charging, the Government may narrow the scope of a particular
 case even more by electing to proceed to trial or to accept a guilty
 plea to only one or two of a substantial number of images found to

22 ⁴ The Government moved to seal Exhibit A to the Government Statement which contains the materials supporting
 23 the restitution requests (Dkt. No. 36), and Mr. Hoffman did not object to the request (Dkt. No. 38 at 2). The Court
 24 granted the Government’s motion to seal the materials. Dkt. No. 39. Given the amount of personal information
 contained in the materials, it would be unfeasible to require the Government to redact the materials. However, the
 Court believes that this particular passage from the materials is an exception as it simply states objective facts
 applicable to all the victims.

1 be involved in the case. The victim whose images do not “survive”
 2 to the final count(s) of conviction has little or no possibility of
 3 obtaining an order of restitution against a particular defendant, let
 4 alone payment of restitution. The victim has no input whatsoever
 5 in the Government’s decisions in this regard. Thus, a victim’s
 6 images may be involved in many cases, though she may not
 7 become aware of that fact, and that fact may have nothing to do
 8 with whether she has the opportunity to receive any restitution
 9 orders.

10 A number of courts have commented that these factors are simply
 11 unknowable, and that the *Paroline* opinion has provided no
 12 guidance in this area.

13 Dkt. No. 37 at 109–10. The final line sums up the conundrum the Court faces: the difficulty in
 14 practice of making a reasoned determination—based on factors that are often unascertainable—
 15 of what specific amount of loss suffered by a victim of child pornography is attributable to a
 16 defendant like Mr. Hoffman, who possessed (and presumably consumed) but did not produce or
 17 distribute the images at issue. The exercise of attempting to apply the remaining *Paroline* factors
 18 is not much more helpful; they only seem to force courts into the prohibited practice of “arbitrary
 19 calculations.” *See Kennedy*, 643 F.3d at 1261.

20 Finally, the Court notes that only a handful of victims disaggregated losses caused by
 21 “the original abuse of the victim” from losses caused by “the ongoing distribution and possession
 22 of images of that original abuse, to the extent possible” as required by the Ninth Circuit. *Galan*,
 23 804 F.3d at 1291. However, this oversight for those who did not provide this information
 24 becomes irrelevant in light of all the other difficulties applying the “rough guidepost” factors.

25 As the Ninth Circuit lamented in *Galan*, “this area, in which Congress has adopted a
 26 scheme that at least approaches the limits of fair adjudication despite attempts by the courts to
 27 avoid caprice, cries out for a congressional solution.” 804 F.3d at 1291 (footnotes omitted). A
 28 modest silver lining is that, post-*Paroline*, Congress gave a slight helping hand to courts for this
 29 impossible task by amending the mandatory restitution statute to include a statutory minimum

1 amount of \$3,000. 18 U.S.C. § 2259(b)(2)(B). But unfortunately, much uncertainty remains
 2 regarding the determination of restitution in these types of cases. Because the Court does not
 3 have sufficient information regarding the relative causal significance of Mr. Hoffman's conduct
 4 in producing the losses of his victims, the Court has no choice but to award only the statutory
 5 minimum for each victim.

6 **C. Step Three: Termination of Payment**

7 After a victim has received restitution in the full amount of the victim's losses, the
 8 liability of each defendant who is or has been ordered to pay restitution for such losses to that
 9 victim shall be terminated. 18 U.S.C. § 2259(b)(2)(C). The Government provided information
 10 regarding the total amount recouped from all cases across the country by 25 of the victims at
 11 issue. *See* Dkt. No. 35 at 4; Dkt. No. 37 at 2. The information provided by the Government
 12 shows that the 25 victims have not yet recouped their total losses (or so much of their total losses
 13 such that the \$3,000 restitution award would put any victim over his or her total loss amount).

14 With regard to the one individual for whom such information is missing, the victim's
 15 counsel represented that a forensic examination is still needed, and the victim has not yet
 16 received enough restitution to cover even the costs of the examination. Dkt. No. 37 at 1619–21.
 17 The costs alone will substantially exceed the statutory minimum amount of \$3,000.

18 Accordingly, as the restitution ordered by the Court will not result in any victim having
 19 received the full amount of his or her total losses, the third and final step of the restitution
 20 inquiry is satisfied. *See* 18 U.S.C. § 2259(b)(2)(C).

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IV. CONCLUSION

For the reasons set forth above, the Court ORDERS Mr. Hoffman to pay each of the 26 victims who have submitted requests (and are listed in Section I of this Order) restitution in the amount of \$3,000, for a total restitution amount of \$78,000.

Dated this 2nd day of September 2022.



Tana Lin
United States District Judge